

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Sylvia Davidovicz	Team: Squad #12	CCRB Case #: 201910719	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 12/13/2019 5:30 PM	Location of Incident: 315 Empire Boulevard	Precinct: 71	18 Mo. SOL 6/13/2021	EO SOL 1/28/2022	
Date/Time CV Reported Mon, 12/16/2019 10:06 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 12/16/2019 10:06 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT Keith Cheng	00644	929882	071 PCT
2. POM Roger Delfosse	14900	955863	071 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT John Kenny	05559	950674	071 PCT
2. POM Taleb Hossain	747	955986	071 PCT
3. POM Adrian Duran	19454	959612	071 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Keith Cheng	Abuse: Sergeant Keith Cheng refused to provide his name to § 87(2)(b)	
B.SGT Keith Cheng	Force: Sergeant Keith Cheng used physical force against § 87(2)(b)	
C.SGT Keith Cheng	Abuse: Sergeant Keith Cheng did not obtain medical treatment for § 87(2)(b)	
D.POM Roger Delfosse	Abuse: Police Officer Roger Delfosse did not obtain medical treatment for § 87(2)(b)	
	§ 87(2)(g), § 87(4-b)	

## Case Summary

On December 16, 2019, § 87(2)(b) called the CCRB and made this complaint on behalf of her 31-year-old daughter, § 87(2)(b).

On December 13, 2019 at approximately 5:30 PM inside of the United States Post Office at 315 Empire Boulevard in Brooklyn, Sergeant Keith Cheng refused to provide his name to § 87(2)(b) (Allegation A: Abuse of Authority, § 87(2)(g)). Sgt. Cheng then dragged § 87(2)(b) while handcuffing her (Allegation B: Force, § 87(2)(g), § 87(2)(b)) was injured in the altercation that led to her arrest. Sgt. Cheng refused to obtain medical attention for her injury (Allegation C: Abuse of Authority, § 87(2)(g)). Police Officer Roger Delfosse, § 87(2)(b) arresting officer, refused to provide medical attention for her injury (Allegation D: Abuse of Authority, § 87(2)(g), § 87(4-b), § 87(2)(g)).

This case has video evidence in the form of NYPD officer body worn camera video (Board Review 14, 15, 22, 23; video summaries in Board Review 24, 25, 26, 27) and surveillance footage from the US Post Office (Board Review 09, summaries in Board Review 28, 29).

## Findings and Recommendations

### Allegation (A) Abuse of Authority: Sergeant Keith Cheng refused to provide his name to § 87(2)(b)

In her CCRB interview, § 87(2)(b) explained that on December 13, 2019, at approximately 5:30 p.m., she became involved in a physical dispute at a Post Office located at 315 Empire Boulevard in Brooklyn. Officers from the 71<sup>st</sup> Precinct, including Sergeant Keith Cheng responded to the location in regards to the dispute. § 87(2)(b) stated that when she asked Sgt. Cheng to state his name for § 87(2)(b) he refused to do so, instead telling § 87(2)(b) that his name would be on the paperwork that she would receive later (Board Review 02). § 87(2)(b) stated that she never received any paperwork with Sgt. Cheng's name.

PO Delfosse's BWC footage captures the interaction between § 87(2)(b) and Sgt. Cheng prior to § 87(2)(b) handcuffing (Board Review 14). § 87(2)(b) asks Sgt. Cheng for his name at 21:55 minutes into the video. In response, Sgt. Cheng gestures to his badge and says, "It's right here, it's Cheng."

In his CCRB interview, Sgt. Cheng stated that he did not recall § 87(2)(b) asking for his name or providing his name to § 87(2)(b) or § 87(2)(b) (Board Review 04).

Even though neither § 87(2)(b) nor Sgt. Cheng remembered Sgt. Cheng providing his name to § 87(2)(b) upon request, the BWC footage shows that Sgt. Cheng did tell § 87(2)(b) his name in response to her asking for it.

§ 87(2)(g)

**Allegation (B) Force: Sergeant Keith Cheng used physical force against § 87(2)(b)**

§ 87(2)(b) stated that Sgt. Cheng handcuffed her and then dragged her toward a police car. § 87(2)(b) remained on her feet, but, because she was injured, the pace at which Sgt. Cheng made her walk was painful. Sgt. Cheng pulled § 87(2)(b) for three steps before PO Delfosse took over and walked the remaining distance to the police car.

PO Delfosse's BWC video shows that at the 22:43 minute mark, Sgt. Cheng grasps § 87(2)(b) arm and begins turning § 87(2)(b) around, simultaneously asking § 87(2)(b) to turn around. At 22:45 minutes, § 87(2)(b) shouts, "My ankle" and, "I'll do it myself." § 87(2)(b) then, while favoring her non-injured foot, turns her body around so that Sgt. Cheng can handcuff her. Sgt. Cheng is not shown dragging § 87(2)(b) or walking her for any distance. PO Delfosse walks § 87(2)(b) slowly to the NYPD vehicle.

In his CCRB interview, Sgt. Cheng stated that PO Delfosse walked § 87(2)(b) to an NYPD vehicle after she was handcuffed.

In his CCRB interview, PO Delfosse stated that he did not witness Sgt. Cheng use any force against § 87(2)(b) (Board Review 03).

The BWC footage does not depict Sgt. Cheng walking or dragging § 87(2)(b) toward an NYPD vehicle for any distance, nor does it depict Sgt. Cheng doing anything that rises to the level of force or misconduct.

§ 87(2)(g)

**Allegation (C) Abuse of Authority: Sergeant Keith Cheng did not obtain medical treatment for § 87(2)(b)**

In her CCRB interview, § 87(2)(b) stated that while she was in the Post Office and the responding officers investigated, an EMT responded to the incident. The EMT asked § 87(2)(b) if she needed medical attention. Sgt. Cheng told the EMT that she did not. Later § 87(2)(b) asked Sgt. Cheng, "What about my ankle?" and he responded, "Don't worry about your ankle." § 87(2)(b) stated that, while she was in the holding cell at the 71<sup>st</sup> Precinct stationhouse, PO Delfosse told her that he wanted to obtain medical attention for her, but Sgt. Cheng had not permitted him to call an ambulance for her.

Sgt. Cheng's BWC video does not capture any conversation between § 87(2)(b) and an EMT. (Board Review 15). It does not capture any conversation in which Sgt. Cheng tells an EMT not to treat § 87(2)(b) injury or in which Sgt. Cheng tells § 87(2)(b) not to worry about her ankle.

At the 22:22 mark in PO Delfosse's BWC footage, § 87(2)(b) states, "My ankle is twist, my neck is hurt. At 22:45, § 87(2)(b) shouts, "My ankle," as Sgt. Cheng attempts to turn her body around. At the 25:20 minute mark, § 87(2)(b) says, "What about my ankle?" PO Delfosse responds, "We're gonna have EMS look at it when we get to the precinct."

§ 87(2)(b) arrest report states that her physical condition at the time of her arrest was "apparently normal" (Board Review 06). The arrest report was created by PO Delfosse and

approved by Sgt. Cheng.

The Command Log entry regarding § 87(2)(b) arrest was filled out at 5:45 PM (Board Review 10). The entry states that § 87(2)(b) physical and mental state was “apparently normal” and that she did not request medical attention. It states that the arrest was approved by Sgt. Cheng. Because the handwriting in the Command Log entry appears to match that of person who wrote the preceding and following unrelated entries in the Command Log, there is no indication that the entry was made by Sgt. Cheng.

In his CCRB interview, Sgt. Cheng stated that he did not forbid PO Delfosse from obtaining medical treatment for § 87(2)(b). Sgt. Cheng also stated that § 87(2)(b) was not limping during the incident. During his CCRB interview Sgt. Cheng was shown a clip from PO Delfosse’s BWC footage, beginning at 22:45 minutes into the recording, where § 87(2)(b) shouts, “My ankle,” as Sgt. Cheng attempts to turn her body around to handcuff her. In his CCRB interview, Sgt. Cheng stated that he saw § 87(2)(b) exclamation in the footage as a statement that she was injured and as a request for medical attention. He stated that it was the responsibility of the arresting officer to obtain medical attention for an injured prisoner. Sgt. Cheng could not recall if he was aware of PO Delfosse’s statements that he would get medical attention for § 87(2)(b). Sgt. Cheng did not recall when an MTPR for § 87(2)(b) was prepared or submitted. Sgt. Cheng remembered being asked to sign off on an MTPR but could not recall when this happened. Sgt. Cheng left the stationhouse after § 87(2)(b) was taken to the holding cell, at approximately 6:00 PM. Sgt. Cheng had no knowledge of what happened to § 87(2)(b) after he left the stationhouse.

In his CCRB interview, PO Delfosse stated that he would have been responsible for obtaining medical attention for § 87(2)(b) if necessary. During the incident, PO Delfosse overheard § 87(2)(b) tell Sgt. Cheng that her neck was hurt and saw that she was limping. PO Delfosse was aware that § 87(2)(b) was injured and told her that he was going to obtain medical attention for her ankle. PO Delfosse did not have any memory of speaking about § 87(2)(b) injuries with Sgt. Cheng during the incident.

Procedure 210-04 of the Patrol Guide states that a medical treatment of prisoner report should be prepared for any prisoner who “refuses treatment after claiming injury or illness, or is in apparent need of treatment” (Board Review 32). The procedure states that the supervisor is responsible for ensuring that the MTPR is prepared, reviewing the MTPR, and signing off on the MTPR.

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

**Allegation (D) Abuse of Authority: Police Officer Roger Delfosse did not obtain medical treatment for** § 87(2)(b)

In her CCRB interview, § 87(2)(b) stated that she did not receive medical attention and was not offered medical attention while in police custody. § 87(2)(b) stated that she alerted Sgt. Cheng to her injury when she was handcuffed but did not specifically medical attention because Sgt. Cheng had told her, “Don’t worry about your ankle.” After she had been in the holding cell for several hours, PO Delfosse told § 87(2)(b) that he was sorry that he had been unable to obtain medical attention for her, but that Sgt. Cheng had forbidden it. Before § 87(2)(b) was taken to Central Booking, PO Delfosse told her to stop limping because it would look bad. PO Delfosse told § 87(2)(b) that she would be offered medical treatment when she arrived at Central Booking. At Central Booking, § 87(2)(b) was asked questions about her mental state, but was not asked whether she was injured. § 87(2)(b) did not ask for medical treatment while at Central Booking because she expected it to be offered to her. She was surprised when the survey about her mental health ended without any questions about her physical condition. § 87(2)(b) was kept overnight, then released. She went to CityMD at West 4<sup>th</sup> Street for treatment on Monday, December 16, three days after the incident. § 87(2)(b) stated that she waited to seek treatment because the urgent care clinic was near her workplace.

In a follow-up phone call on May 6, 2020, § 87(2)(b) stated that after PO Delfosse locked the holding cell door, he told her that he would be back in a minute and then left for several hours. § 87(2)(b) stated that she may have signed something at the front desk when she arrived at the stationhouse. § 87(2)(b) also signed a document provided by a representative of the Post Office who came to the stationhouse later in the night. § 87(2)(b) stated that she did not sign any other documents and did not refuse to sign any documents that PO Delfosse asked her to sign. § 87(2)(b) stated that PO Delfosse did not ask her to sign an informal, handwritten document or an official document stating that she refused medical attention.

On February 3, 2020, the undersigned investigator spoke to § 87(2)(b) who was in the holding cell at the 71<sup>st</sup> Precinct stationhouse at the same time as § 87(2)(b) (Board Review 37). § 87(2)(b) stated that she was in the holding cell with one other woman, identified by the investigation as § 87(2)(b) for several hours. She stated that § 87(2)(b) spoke to her arresting officer at some point in the night, but could not recall what they spoke about. § 87(2)(b) did not recall § 87(2)(b) asking for an ambulance at any time. Because § 87(2)(b) was upset about being arrested, she was not paying very much attention to what § 87(2)(b) did or said.

At the 22:22 mark in PO Delfosse’s BWC footage, § 87(2)(b) states, “My ankle is twist, my neck is hurt. At 22:45, § 87(2)(b) shouts, “My ankle,” as Sgt. Cheng attempts to turn her body around. At the 25:20 minute mark, § 87(2)(b) says, “What about my ankle?” PO Delfosse responds, “We’re gonna have EMS look at it when we get to the precinct.” At 44:04 minutes into the video, PO Delfosse tells § 87(2)(b) that he is going to obtain medical attention for her while walking her down a hallway inside of the stationhouse. § 87(2)(b) was limping for the entirety of her interaction with police. This is clearest at 35:49 minutes, when an unidentified female officer walks § 87(2)(b) to a bathroom to be searched and at 42:42 when the same officer walks § 87(2)(b) back to the front desk from the bathroom. PO Delfosse closes the door to the holding cell 47:50 minutes into the recording. According to the timestamp in the upper left corner of the video, this occurred at 5:56 PM.

§ 87(2)(b) medical records from § 87(2)(b) show that § 87(2)(b) obtained treatment for her ankle on December 16, 2019, three days after receiving the injury (Board Review 13, privileged document). The records state that § 87(2)(b) was limping at the time of her appointment at the clinic and reported experiencing mild pain in her right ankle and tingling in her toes. § 87(2)(b) right foot and ankle were x-rayed. The x-ray did not show any fractures. § 87(2)(b) was given crutches at the conclusion of her appointment. The official diagnoses were “foot pain” and “ankle pain.”

The 71<sup>st</sup> Precinct Command Log from the night of the incident notes § 87(2)(b) arrest (Board Review 10). It lists her physical/mental condition as “normal” and states that she has no disabilities. This entry was made at 5:45 PM.

The SPIA for the stationhouse shows that there were no calls for an ambulance to the stationhouse on the night of December 13, 2019 through the early morning of December 14, 2019 (Board Review 12).

In his CCRB interview on February 27, 2020, PO Delfosse stated that he was aware that § 87(2)(b) had an injured ankle at the time of the incident. Immediately after PO Delfosse locked the holding cell door and turned off his body worn camera, he asked § 87(2)(b) if she needed medical attention for her ankle. § 87(2)(b) stated that she did not want medical attention because it would take too long. PO Delfosse did not say why he turned off his BWC for this conversation. PO Delfosse did not communicate with the desk officer regarding § 87(2)(b) injury.

PO Delfosse stated in his CCRB interview that he handwrote a form on a fly page of his memo book when § 87(2)(b) stated that she did not want medical attention (Board Review 16). He presented the fly page of his memo book for the date of incident to the undersigned investigator, who confirmed that the handwritten note reads, “I, § 87(2)(b) did refuse medical treatment,” followed by a line for a signature, which is empty. This is followed by the note, “Perp refused to sign.” The document was provided to the investigation inside of the interview room, immediately before PO Delfosse’s CCRB interview, and was copied after the interview. PO Delfosse stated that he had learned during his training that officers should ask prisoners to sign handwritten forms on memo book fly pages when they refused medical attention. PO Delfosse also stated that he prepared a Medical Treatment of Prisoner Report for the incident. Because § 87(2)(b) refused medical treatment, PO Delfosse asked her to sign the section of the report stating that she had refused medical treatment. PO Delfosse stated that § 87(2)(b) had also refused to sign this document. PO Delfosse submitted the MTPR to the District Attorney’s office the night of the incident. PO Delfosse stated that, two to three days after he had submitted paperwork related to the arrest, he received a call from the assistant district attorney, who stated that the necessary paperwork had not been submitted. PO Delfosse told the assistant district attorney that he had submitted the documents, then electronically submitted a copy of the MTPR.

PO Delfosse’s memo book from the night of the incident following § 87(2)(b) arrest reads: “17:45 84 @71 pct.; 18:30 61 completed handwritten; 18:50 61 generated; 19:10 online complete handwritten; 19:50 online generated; 20:40 photos & fingerprint taken; 22:30 ECB called need additional paperwork” (Board Review 10).

In his CCRB interview, Sgt. Cheng stated that § 87(2)(b) statements at 22:22 and 22:45 constituted requests for medical attention. Sgt. Cheng stated that he was not familiar with any policy encouraging officers to have prisoners sign their memo book fly pages to confirm refusal of

medical attention.

The fly page signature form was not included in the scanned copy of the memo book received by the investigation on January 14, 2020 (Board Review 10), but it was provided to the undersigned investigator on the date of PO Delfosse's CCRB interview at the undersigned's request.

The MTPR was requested four times. The investigation received negative results for the first request from off-site IAB on January 7, 2020 (Board Review 08). The investigation received negative results for the MTPR from the Brooklyn Court Desk on March 4, 2020 (Board Review 17), and negative results for the MTPR from off-site IAB on March 18, 2020 (Board Review 35). The investigation received a second negative result for the MTPR from off-site IAB on April 18, 2020 (Board Review 34). The following note was written on the fourth receipt: "not on file due to not being prepared by CMD 71—no record of prisoner being transported to hospital."

The BWC video shows that § 87(2)(b) gave multiple indications to PO Delfosse and that she was injured, that PO Delfosse was aware of § 87(2)(b) injuries, and that PO Delfosse told § 87(2)(b) he would obtain medical attention for her. PO Delfosse informed the CCRB that § 87(2)(b) later refused medical attention because she did not want to delay arrest processing, but there is no proof of this refusal either in the form of a signed Medical Treatment of Prisoner Form or any other document. Additionally, the notations in the Command Log and Arrest Report indicate that he did not inform the desk supervisor that § 87(2)(b) was either injured or that she refused medical attention.

According to Patrol Guide procedure 210-04, the arresting officer is required to request an ambulance, tell desk officer that the prisoner needs medical attention, and accompany the prisoner to the hospital (Board Review 32). If a prisoner receives medical treatment, refuses treatment after claiming to be injured, or is in apparent need of treatment, the arresting officer must prepare a Medical Treatment of Prisoner Report.

Patrol Guide procedure 212-08 states that officers should record "tasks performed" and "action taken, narrative disposition, forms prepared with identifying serial number" in their memo books (Board Review 36). It states that the blank sides of memo book pages may be used for "diagrams, sketches, etc., when necessary."

§ 87(2)(g)

The Patrol Guide does not indicate that the blank sides of memo book pages should be used as a place to note necessary procedures omitted from the lined side of the memo book page. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(4-b) § 87(2)(g)

§ 87(2)(g)

#### **Civilian and Officer CCRB Histories**

- This is the first CCRB complaint in which § 87(2)(b) has been named as a victim (Board Review 19).
- Sgt. Cheng has been a member of service for 17 years and has been the subject of 17 prior CCRB complaints and 21 allegations. Three of these were substantiated.
  - 200715485 involved substantiated allegations of refusal to provide name and shield number and a discourteous word against Sgt. Cheng. The Board recommended charges and the NYPD imposed no discipline.
  - 201703835 involved a substantiated allegation of a refusal to process a civilian complaint. The Board recommended Command Discipline A and the NYPD imposed Command Discipline A.
- PO Delfosse has been a member of service for six years and has been the subject of three past CCRB complaints and three allegations. None of these were substantiated.



### Mediation, Civil and Criminal Histories

- This case was not suitable for mediation because § 87(2)(b) was arrested.
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]  
[REDACTED]  
[REDACTED]  
[REDACTED]
- [REDACTED]  
[REDACTED]
- As of March 16, 2020, no notice of claim has been filed in regard to this incident (Board Review 21).

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Squad No.: 12

Investigator: Sylvia Davidovicz      Inv. Sylvia Davidovicz      06/30/2020  
Signature      Print Title & Name      Date

Squad Leader: Carlmais Johnson      IM Carlmais Johnson      July 1, 2020  
Signature      Print Title & Name      Date

Reviewer: \_\_\_\_\_  
Signature      Print Title & Name      Date